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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/747,956	12/31/2003	Ulrich Seseke-Koyro	037110.51540D1	6209

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EXAMINER	
NGUYEN, NGOC YEN M	
ART UNIT	PAPER NUMBER
1754	

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/747,956	SESEKE-KOYRO ET AL.	
	Examiner	Art Unit	
	Ngoc-Yen M. Nguyen	1754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 January 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *8-17* is/are pending in the application.

4a) Of the above claim(s) *13-17* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *8-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Applicant's election with traverse of Group I in the reply filed on January 5, 2005 is acknowledged. The traversal is on the ground(s) that all of the claims of Group II, claims 13-17 require the product of claims 8, 11, or 12 (Group I). This is not found persuasive because the claims in Group II are hybrid claims, i.e. process of using claims depending on product claims, and these claims are treated in similar manner as "product-by-process" claims. Even though the claims of Group II require the product of Group I, Group II still can be properly restricted from Group I if Group II can be practiced with a materially different product other than the product of Group I, just as in "product-by-process" claims, if the product can be produced by a different process or the process can produce different product, the "product-by-process" claims can be restricted from the process claims.

Applicants further argue that the product of US '221 (which is the US equivalence of WO '641) is cited as a product which is "materially different" from the claimed product but it was applied in an obviousness rejection.

It should be noted that the claimed product in Group I, besides being an alkali metal fluorozincate, is only defined by the particle size distribution. Thus, any alkali metal fluorozincate, which does not have the same particle size distribution as the claimed product, is considered as "materially different" from the claimed product. It should also be noted that WO '641 is applied in an "obviousness" rejection, not in an "anticipation" rejection, therefore, there is at least some differences between the two products. If Applicants insists that the product of WO '641 (or US '221) is not "materially

different" from the claimed invention, the restriction will be withdrawn, however, WO '641 reference will be applied in a 102 rejection instead.

The requirement is still deemed proper and is therefore made FINAL.

Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 99/48641 or Lauzon et al (6,105,850), either one in view of Popoola et al (5,723,187).

WO '641 discloses an alkali fluorozincate as a fluxing agent for aluminum or aluminum alloys (note claim 1). The alkali metal can be potassium (note claim 2).

Alternatively, Lauzon '850 is applied as stated below.

Lauzon '850 discloses that potassium fluorozincate can be used as a fluxing agent for aluminum brazing (note claim 1 and column 2, lines 34-41).

The difference is WO '641 or Lauzon '850 does not disclose that the particle size of the potassium fluorozincate.

Popoola '187 discloses in a process of using a flux to for bonding metals to aluminum substrate, the flux is desired to be applied as a solution and the particle size of the flux is controlled to less than 10 micrometers so that the particles remaining in suspension at all times without stirring (note column 2, lines 18-26).

It would have been obvious to one of ordinary skill in the art to obtain potassium fluorozincate of either WO '641 or Lauzon '850, by optimizing the conditions of the process of making such product, or by pulverizing (if the product particles are too big) or agglomerating (if the product particles are too small), with the particle size of less than 10 micrometers as suggested by Popoola '187 because such particle size is desired in the art of using a flux in a brazing process.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO '461 or Lauzon '850 in view of Shimajiri et al (4,989,775).

WO '461 or Lauzon '850 is applied as stated above.

The difference is WO '461 or Lauzon '850 does not disclose the particle size for the potassium fluorozincate.

Shimajiri '775 discloses for a process of brazing aluminum components, a fluoride flux powder having a grain size of 15 microns on average is desirable (note column 4, lines 55-57).

It would have been obvious to one of ordinary skill in the art to obtain potassium fluorozincate of either WO '641 or Lauzon '850, by optimizing the conditions of the process of making such product, or by pulverizing (if the product particles are too big) or agglomerating (if the product particles are too small), with the particle size of 15 micrometers on average, as suggested by Shimajiri '775 because such particle size is desired in the art of using a flux in a brazing process.

Applicant's arguments filed January 5, 2005 have been fully considered but they are not persuasive.

Applicants argue that there is no teaching or suggestion in Popoola to try to achieve a fluorozincate with a grain spectrum in which 50% of the particles have a particle size of less than 5 microns or less than 3.8 microns.

In Popoola, the particle size of a flux (a fluoride salt) for bonding aluminum based substrates is desired to be less than 10 microns, with at least 70% of the salts being in the particle size range of 2-4 microns in order to maintain the particles in suspension at all times without stirring (note column 2, l lines 18-27).

Applicants argue that one skilled in the art would have no motivation to try to combine the cited references.

The motivation to combine the reference is stated in the above rejection. Both WO '641, Lauzon '850 and Popoola are related to a flux for bonding aluminum substrates. While WO '641, Lauzon '850 do not specifically disclose the particle size

distribution for the flux, Popoola fairly suggests that smaller particle size is desired in order to maintain the particles in suspension without stirring.

Applicants argue that one skilled in the art would not assume and would have no reason to assume that the particle sizes taught by Shimajiri would be valid for all fluxes.

Since the flux used in Shimajiri was a fluoride salt and for bonding aluminum substrates, one skilled in the art would have reasonable expectation of success to use the particle size disclosed in Shimajiri for the flux of WO '641, Lauzon '850 because the flux of WO '641 or Lauzon '850 is also a fluoride salt for bonding aluminum surfaces.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ngoc-Yen M. Nguyen whose telephone number is (571) 272-1356. The examiner is currently on Part time schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Stanley Silverman can be reached on (571) 272-1358. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed (571) 272-1700.

Ngoc-Yen M. Nguyen
Primary Examiner
Art Unit 1754

nmn
April 4, 2005